

1           969.24 (1) NATURE. A citation under this section is a directive, issued by a law  
2 enforcement officer, that a person appear in court ~~and answer criminal charges. A~~  
3 ~~citation is not or the district attorney's office. The citation may be used as a criminal~~  
4 ~~complaint and may not be used as a substitute for a criminal complaint if endorsed~~  
5 ~~by the district attorney as provided in sub. (5).~~

6           **SECTION 415.** 968.085 (2) (intro.) of the statutes is renumbered 969.24 (2) and  
7 amended to read:

8           969.24 (2) AUTHORITY TO ISSUE; EFFECT. ~~Except as provided in sub. (8), a~~ A law  
9 enforcement officer may issue a citation to any person whom he or she has reasonable  
10 ~~grounds probable cause~~ to believe has committed a misdemeanor. A citation may be  
11 issued in the field ~~or at the headquarters or precinct station of the officer instead of~~  
12 ~~or subsequent to at any time after a lawful arrest. If a citation is issued, the person~~  
13 ~~cited shall be released on his or her own recognizance. In determining whether to~~  
14 ~~issue a citation, the law enforcement officer may consider whether:~~

15           **SECTION 416.** 968.085 (2) (a) to (f) of the statutes are repealed.

16           **SECTION 417.** 968.085 (3) (intro.) of the statutes is renumbered 969.24 (3)  
17 (intro.).

18           **SECTION 418.** 968.085 (3) (a) of the statutes is renumbered 969.24 (3) (a) and  
19 amended to read:

20           969.24 (3) (a) ~~Identify the offense and section which~~ State essential facts  
21 constituting the crime the person is ~~alleged to have~~ allegedly committed and the  
22 statutory section that the person allegedly violated, including the date, and if  
23 material, identify the property and other persons involved of the offense and the  
24 maximum penalty for the offense.

1           **SECTION 419.** 968.085 (3) (b) of the statutes is renumbered 969.24 (3) (b) and  
2 amended to read:

3           969.24 (3) (b) ~~Contain~~ State the name and address of the person cited, or other  
4 identification if ~~that~~ the person's name or address cannot be ascertained.

5           **SECTION 420.** 968.085 (3) (c) of the statutes is renumbered 969.24 (3) (c).

6           **SECTION 421.** 968.085 (3) (d) of the statutes is renumbered 969.24 (3) (d) and  
7 amended to read:

8           969.24 (3) (d) Direct the person cited to appear ~~for his or her initial appearance~~  
9 ~~in a designated court, at a designated~~ at a specified location and at a specified time  
10 and date.

11           **SECTION 422.** 968.085 (4) of the statutes is renumbered 969.24 (4) and amended  
12 to read:

13           969.24 (4) SERVICE. ~~A~~ The officer issuing the citation shall give a copy of the  
14 ~~citation shall be delivered to the person cited, and file the original must be filed with~~  
15 the district attorney.

16           **SECTION 423.** 968.085 (5) of the statutes is renumbered 969.24 (5) and amended  
17 to read:

18           969.24 (5) REVIEW BY DISTRICT ATTORNEY. The district attorney shall review the  
19 citation and may issue a complaint by endorsing the citation with his or her signature  
20 or issue a separate complaint charging the cited person. If the district attorney  
21 reviews the case before the return date and declines to prosecute, he or she shall  
22 notify the law enforcement agency ~~which~~ that issued the citation. The law  
23 enforcement agency shall attempt to notify the person cited that he or she will not  
24 be charged and is not required to appear as directed in the citation.

25           **SECTION 424.** 968.085 (6) of the statutes is renumbered 969.24 (6).

1           **SECTION 425.** 968.085 (7) of the statutes is renumbered 969.24 (7) and amended  
2 to read:

3           969.24 (7) ~~PREPARATION OF FORM.~~ The ~~judicial conference shall prescribe the~~  
4 ~~form and content of the citation under s. 758.171 shall be in substantially the same~~  
5 ~~form set forth in s. 969.26 (3).~~

6           **SECTION 426.** 968.085 (8) of the statutes is renumbered 969.24 (8) and amended  
7 to read:

8           969.24 (8) **INAPPLICABILITY TO CERTAIN DOMESTIC ABUSE CASES.** A law enforcement  
9 officer may not issue a citation to a person for an offense if the officer is required to  
10 arrest the person for that offense under s. ~~968.075~~ 969.27 (2).

11           **SECTION 427.** 968.09 (title) of the statutes is renumbered 969.50 (title) and  
12 amended to read:

13           **969.50 (title)** ~~Warrant~~ Bench warrant for defendant on failure to  
14 ~~appear.~~  
15

16           **SECTION 428.** 968.09 (1) of the statutes is renumbered 969.50 (1) and amended  
17 to read:

18           969.50 (1) When a defendant or a witness fails to appear before the court as  
19 required, or violates a ~~term of the defendant's or witness's bond or the defendant's~~  
20 ~~or witness's probation, if any,~~ or condition of release, the court may issue a bench  
21 warrant for the defendant's or witness's arrest which shall direct that the defendant  
22 or witness be brought before the court without unreasonable delay. The court shall  
state on the record at the time of issuance of the bench warrant the reason therefor.

23           **SECTION 429.** 968.09 (2) of the statutes is repealed.

24           **SECTION 430.** 968.10 of the statutes is renumbered 968.455, and 968.455  
25 (intro.), (1), (2), (3), (4) and (5), as renumbered, are amended to read:

INS 123-23

**968.455 Searches and seizures; when authorized.** (intro.) A search of a person, object, or place may be made and things may be seized when the search is made under any of the following circumstances:

- (1) Incident to a lawful arrest;;
- (2) With consent;;
- (3) Pursuant to a valid search warrant;;
- (4) With the authority and within the scope of a right of lawful inspection;;
- (5) Pursuant to a search during an authorized temporary questioning as provided in s. ~~968.25~~; or ~~968.565~~.

**SECTION 431.** Subchapter II (title) of chapter 968 [precedes 968.105] of the statutes is created to read:

## CHAPTER 968

## SUBCHAPTER II

# JOHN DOE PROCEEDINGS

**SECTION 432.** 968.11 of the statutes is renumbered 968.575 and amended to read:

**968.575 Scope of search incident to lawful arrest.** When a lawful arrest is made, a law enforcement officer may reasonably search the person arrested and an area within such person's immediate presence for any of the purpose of following purposes:

- (1) Protecting the officer from attack;
- (2) Preventing the person from escaping;
- (3) Discovering and seizing the fruits of the crime; or other offense.

(4) Discovering and seizing any instruments, articles, or things which may have been used in the commission of, or which may constitute evidence of, the offense.

SECTION 433. 968.12 (title) of the statutes is renumbered 968.465 (title) and amended to read:

968.465 (title) ~~Search~~ **Application for and issuance of search warrant.**

SECTION 434. 968.12 (1) of the statutes is renumbered 968.465 (1) and amended to read:

968.465 (1) DESCRIPTION AND ISSUANCE. A search warrant is an order signed by a judge directing a law enforcement officer to conduct a search of a designated person, a designated object, or a designated place for the purpose of seizing designated property or kinds of property things. A judge shall issue a search warrant if probable cause is shown.

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SECTION 435. 968.12 (2) and (3) (a) and (d) of the statutes are consolidated, renumbered 968.465 (2) and amended to read:

968.465 (2) ~~WARRANT UPON AFFIDAVIT~~ PROCEDURE GENERALLY. ~~A search warrant may be based upon sworn complaint or Probable cause may be shown by an affidavit, or by oral testimony, or by a combination of an affidavit and oral testimony. The affidavit or testimony shall be sworn to or affirmed and may be upon information and belief. Oral testimony shall be recorded by a phonographic stenographic reporter or under sub. (3) (d), showing probable cause therefor. The complaint, affidavit or testimony may be upon information and belief. (3) (a) General rule. A search warrant may be based upon sworn oral testimony voice recording device and may be communicated to the judge in person or by telephone, radio, or other reliable means of electronic communication, under the procedure prescribed in this subsection. (d)~~

~~Recording and certification of testimony.~~ When a caller informs the judge that the purpose of the call is to request a warrant, the judge shall place under oath each person whose testimony forms a basis of the application and each person applying for the warrant. The judge or requesting person shall arrange for all sworn testimony to be recorded either by a stenographic reporter or by means of a voice recording device. The judge shall have the record transcribed. The. A transcript of the testimony, certified as accurate by the judge or reporter, as appropriate, shall be filed with the court. If the testimony was recorded by means of a voice recording device, the judge shall also file and the original recording of any testimony recorded by a voice recording device shall be filed with the court.

**SECTION 436.** 968.12 (3) (title) of the statutes is renumbered 968.465 (3) (title) and amended to read:

968.465 (3) (title) ~~WARRANT UPON ORAL~~ TELEPHONE AND OTHER REMOTE TESTIMONY; DUPLICATE WARRANT PROCEDURE.

**SECTION 437.** 968.12 (3) (b) of the statutes is renumbered 968.465 (3) (a) and amended to read:

968.465 (3) (a) ~~Application.~~ The person who is requesting the warrant When the applicant for a search warrant is testifying outside the presence of the judge, the judge shall place the applicant under oath or affirmation and arrange for all testimony to be recorded. The applicant shall prepare a duplicate original warrant and read the duplicate original warrant, verbatim, to the judge. The judge shall enter, verbatim, what is read on the original warrant. The Thereafter, but before signing the original warrant, the judge may direct that the warrant be modified.

**SECTION 438.** 968.12 (3) (c) and (f) of the statutes are consolidated, renumbered 968.465 (3) (b) and amended to read:

1           968.465 (3) (b) *Issuance*. If the judge determines that there is probable cause  
2 for the warrant, the judge shall ~~order the issuance of a~~ issue the warrant by ~~directing~~  
3 ~~the person requesting the warrant to sign the judge's name on the duplicate original~~  
4 ~~warrant. In addition, the person shall sign his or her own name on the duplicate~~  
5 ~~original warrant. The judge shall immediately sign~~ signing the original warrant and  
6 enter on the face of the original warrant the exact time when the warrant was  
7 ordered to be issued. The finding of probable cause for a warrant upon oral testimony  
8 shall be based on the same kind of evidence as is sufficient for a warrant upon  
9 affidavit. (f) *Entry of time of execution*. The judge shall direct the applicant to sign  
10 the judge's name on the duplicate warrant. In addition the applicant shall sign his  
11 or her own name on the duplicate warrant. The person who executes the warrant  
12 shall enter the exact time of execution on the face of the duplicate ~~original~~ warrant.

13           **SECTION 439.** 968.12 (3) (e) of the statutes is repealed.

14           **SECTION 440.** 968.12 (4) of the statutes is renumbered 968.465 (7).

15           **SECTION 441.** 968.13 (title) of the statutes is renumbered 968.475 (title) and  
16 amended to read:

(17)           **968.475** (title) **~~Search warrant; property~~ Property ~~Things~~ subject to seizure.**

18           **SECTION 442.** 968.13 (1) (intro.) of the statutes is renumbered 968.475 (2)  
19 (intro.) and amended to read:

20           968.475 (2) (intro.) A search warrant may authorize the seizure of any of the  
21 following:

22           **SECTION 443.** 968.13 (1) (a) of the statutes is renumbered 968.475 (1) (a) and  
23 amended to read:

24           968.475 (1) (a) "Contraband, ~~which~~" includes ~~without limitation because of~~  
25 enumeration, but is not limited to, lottery tickets, gambling machines, or other

1 gambling devices; lewd, obscene, or indecent written matter, pictures, sound  
2 recordings, or motion picture films; forged money or written instruments and the  
3 tools, dies, machines, or materials for making them; and controlled substances, as  
4 defined in s. 961.01 (4), and controlled substance analogs, as defined in s. 961.01  
5 (4m), and the implements for smoking or injecting them. ~~Gambling~~ “Contraband”  
6 does not include machines or other gambling devices possessed by a shipbuilding  
7 business that complies with s. 945.095 ~~are not subject to this section.~~

8 **SECTION 444.** 968.13 (1) (b), (c) and (d) of the statutes are renumbered 968.475  
9 (2) (b), (c) and (d).

10 **SECTION 445.** 968.13 (2) of the statutes is renumbered 968.475 (1) (intro.) and  
11 amended to read:

12 968.475 (1) (intro.) In this section, ~~“documents”~~;

13 (b) “Documents” includes, but is not limited to, books, papers, records,  
14 recordings, tapes, photographs, films, or computer or electronic data.

15 **SECTION 446.** 968.135 (title) of the statutes is renumbered 968.705 (title).

16 **SECTION 447.** 968.135 of the statutes is renumbered 968.705 (2) and amended  
17 to read:

18 968.705 (2) Upon the request of the attorney general or a district attorney and  
19 upon a showing of probable cause under s. ~~968.12~~ 968.465, a court shall issue a  
20 subpoena requiring the production of documents, ~~as specified in s. 968.13 (2).~~ The  
21 documents shall be returnable to the court which issued the subpoena. ~~Motions to~~  
22 ~~the court, including, but not limited to, motions or to the officer serving the subpoena~~  
23 when the subpoena directs. Any person filing a motion regarding a subpoena issued  
24 under this subsection, including a motion to quash or limit the subpoena, shall be  
25 addressed to file it with the court which issued the subpoena. Any person who



1 unlawfully refuses to produce the documents under this subsection may be  
2 compelled to do so ~~as provided in~~ under ch. 785. This section does not limit or affect  
3 any other subpoena authority provided by law.

4 **SECTION 448.** 968.14 of the statutes is renumbered 968.485 (2) and amended  
5 to read:

6 968.485 (2) USE OF FORCE. All necessary force may be used to execute a search  
7 warrant or to ~~effect any entry into~~ enter any building or property or part thereof to  
8 execute a search warrant.

9 **SECTION 449.** 968.15 of the statutes is renumbered 968.495, and 968.495 (1),  
10 as renumbered, is amended to read:

11 968.495 (1) A search warrant ~~must~~ may not be executed ~~and returned not more~~  
12 than 5 days after the date of issuance.

13 **SECTION 450.** Subchapter III (title) of chapter 968 [precedes 968.155] of the  
14 statutes is created to read:

15 **CHAPTER 968**

16 **SUBCHAPTER III**

17 **GRAND JURIES**

18 **SECTION 451.** 968.16 of the statutes is renumbered 968.485 (3) and amended  
19 to read:

20 968.485 (3) DETENTION AND SEARCH OF PERSONS ON PREMISES PRESENT. ~~The person~~  
21 While executing the search warrant, a law enforcement officer may reasonably  
22 detain any occupant of the premises and may reasonably detain and search any  
23 person on the premises ~~at the time~~ to protect ~~himself or herself~~ the law enforcement  
24 officer from attack or to prevent the disposal or concealment of any item particularly  
25 described in the search warrant.

\*\*\*\*NOTE: If the search warrant is only for evidence (versus contraband), should any occupant be allowed to be detained?

1           **SECTION 452.** 968.17 of the statutes is renumbered 968.506, and 968.506 (1),  
2 as renumbered, is amended to read:

3           968.506 (1) The return of the search warrant shall be made, with a written  
4 inventory of any person or <sup>property</sup> things seized, within 48 hours after execution to the clerk  
5 designated in the warrant. The return shall be accompanied by a written inventory  
6 of any property taken. Upon request, the clerk shall deliver a copy of the inventory  
7 to the person from whom or from whose premises the property was taken and to the  
8 applicant for the search warrant if either requests it.

9           **SECTION 453.** 968.18 of the statutes is renumbered 968.605.

10          **SECTION 454.** 968.19 of the statutes is renumbered 968.615 and amended to  
11 read:

12          **968.615 Custody of property seized.** Property A law enforcement officer  
13 shall safely keep property seized under a search warrant or validly seized without  
14 a warrant ~~shall be safely kept by the officer, who~~ and may leave it in the custody of  
15 the sheriff and take a receipt ~~therefor, for it.~~ The property shall be kept so long as  
16 necessary for the purpose of being produced as evidence on any trial.

17          **SECTION 455.** 968.20 (title) of the statutes is renumbered 968.625 (title).

18          **SECTION 456.** 968.20 (1) of the statutes is renumbered 968.625 (1), and 968.625  
19 (1) (intro.) and (a), as renumbered, are amended to read:

20          968.625 (1) (intro.) Any person claiming the right to possession of property  
21 seized pursuant to a search warrant or seized without a search warrant may apply  
22 for its return to the circuit court for the county in which the property was seized or  
23 where the search warrant was returned. The court shall order such notice as it

1 deems adequate to be given the district attorney and all persons who have or may  
2 have an interest in the property and shall hold a hearing to hear all claims to its true  
3 ownership. If the right to possession is proved to the court's satisfaction, it shall  
4 order the property, other than contraband or property covered under sub. (1m) or (1r)  
5 or s. 173.12 (1m), 173.21 (4) (1), or ~~968.205~~ 968.645, returned if any of the following  
6 applies:

7 (a) The property is not needed as evidence or, if needed, satisfactory  
8 arrangements can be made for its return for subsequent use as evidence; ~~or~~.

9 **SECTION 457.** 968.20 (1m) of the statutes is renumbered 968.625 (1m), and  
10 968.625 (1m) (b), as renumbered, is amended to read:

11 968.625 **(1m)** (b) If the seized property is a dangerous weapon or ammunition,  
12 the property shall not be returned to any person who committed a crime involving  
13 the use of the dangerous weapon or the ammunition. The property may be returned  
14 to the rightful owner under this section if the owner had no prior knowledge of and  
15 gave no consent to the commission of the crime. Property which may not be returned  
16 to an owner under this subsection shall be disposed of under ~~subs. (3) and (4) s.~~  
17 175.27.

18 **SECTION 458.** 968.20 (1r) of the statutes is renumbered 968.625 (1r).

19 **SECTION 459.** 968.20 (2) of the statutes is renumbered 968.625 (2) and amended  
20 to read:

21 968.625 **(2)** Property not required for evidence or use in further investigation,  
22 unless contraband or property covered under sub. (1m) or (1r) or s. 173.12 (1m),  
23 173.21 (1), or ~~968.205~~ 968.645, may be returned by the officer to the person from  
24 whom it was seized without the requirement of a hearing.

1           **SECTION 460.** 968.20 (3) and (4) of the statutes are renumbered 175.27 (1) and  
2           (2) and amended to read:

3           175.27 (1) (a) ~~First~~ Unless the dangerous weapons or ammunition may be  
4           returned to the owner under s. 968.625 (1m) (b), first class cities shall dispose of  
5           dangerous weapons or ammunition seized 12 months after taking possession of them  
6           ~~if the owner, authorized under sub. (1m), has not requested their return and if the~~  
7           dangerous weapon or ammunition is not required for evidence or use in further  
8           investigation and has not been disposed of pursuant to a court order at the  
9           completion of a criminal action or proceeding. Disposition procedures shall be  
10          established by ordinance or resolution and may include provisions authorizing an  
11          attempt to return to the rightful owner any dangerous weapons or ammunition  
12          which appear to be stolen or are reported stolen. If enacted, any such provision shall  
13          include a presumption that, if the dangerous weapons or ammunition appear to be  
14          or are reported stolen, an attempt will be made to return the dangerous weapons or  
15          ammunition to the authorized rightful owner. If the return of a seized dangerous  
16          weapon other than a firearm is not requested by its rightful owner under sub. s.  
17          968.625 (1) and is not returned by the officer under ~~sub. s. 968.625 (2)~~, the city shall  
18          safely dispose of the dangerous weapon or, if the dangerous weapon is a motor  
19          vehicle, as defined in s. 340.01 (35), sell the motor vehicle following the procedure  
20          under s. 973.075 (4) or authorize a law enforcement agency to retain and use the  
21          motor vehicle. If the return of a seized firearm or ammunition is not requested by  
22          its authorized rightful owner under ~~sub. s. 968.625 (1)~~ and is not returned by the  
23          officer under ~~sub. s. 968.625 (2)~~, the seized firearm or ammunition shall be shipped  
24          to and become property of the state crime laboratories. A person designated by the  
25          department of justice may destroy any material for which the laboratory has no use

1 or arrange for the exchange of material with other public agencies. In lieu of  
2 destruction, shoulder weapons for which the laboratories have no use shall be turned  
3 over to the department of natural resources for sale and distribution of proceeds  
4 under s. 29.934 or for use under s. 29.938.

5 (b) Except as provided in par. (a) ~~or~~, sub. ~~(1m)~~ (2), or ~~(4)~~ s. 968.625 (1m), a city,  
6 village, town, or county or other custodian of a seized dangerous weapon or  
7 ammunition, if the dangerous weapon or ammunition is not required for evidence or  
8 use in further investigation and has not been disposed of pursuant to a court order  
9 at the completion of a criminal action or proceeding, shall make reasonable efforts  
10 to notify all persons who have or may have an authorized rightful interest in the  
11 dangerous weapon or ammunition of the application requirements under ~~sub. s.~~ s.  
12 968.625 (1). If, within 30 days after the notice, an application under ~~sub. s.~~ s. 968.625  
13 (1) is not made and the seized dangerous weapon or ammunition is not returned by  
14 the officer under ~~sub. s.~~ s. 968.625 (2), the city, village, town, or county or other  
15 custodian may retain the dangerous weapon or ammunition and authorize its use by  
16 a law enforcement agency, except that a dangerous weapon used in the commission  
17 of a homicide or a handgun, as defined in s. 175.35 (1) (b), may not be retained. If  
18 a dangerous weapon other than a firearm is not so retained, the city, village, town,  
19 or county or other custodian shall safely dispose of the dangerous weapon or, if the  
20 dangerous weapon is a motor vehicle, as defined in s. 340.01 (35), sell the motor  
21 vehicle following the procedure under s. 973.075 (4). If a firearm or ammunition is  
22 not so retained, the city, village, town, or county or other custodian shall ship it to  
23 the state crime laboratories and it is then the property of the laboratories. A person  
24 designated by the department of justice may destroy any material for which the  
25 laboratories have no use or arrange for the exchange of material with other public

1 agencies. In lieu of destruction, shoulder weapons for which the laboratory has no  
2 use shall be turned over to the department of natural resources for sale and  
3 distribution of proceeds under s. 29.934 or for use under s. 29.938.

4 (2) Any property seized, other than property covered under s. ~~968.205~~ 968.645,  
5 that poses a danger to life or other property in storage, transportation, or use and  
6 that is not required for evidence or further investigation shall be safely disposed of  
7 upon command of the person in whose custody they are committed. The city, village,  
8 town, or county shall by ordinance or resolution establish disposal procedures.  
9 Procedures may include provisions authorizing an attempt to return to the rightful  
10 owner substances which have a commercial value in normal business usage and do  
11 not pose an immediate threat to life or property. If enacted, any such provision shall  
12 include a presumption that if the substance appears to be or is reported stolen an  
13 attempt will be made to return the substance to the rightful owner.

14 **SECTION 461.** 968.205 of the statutes is renumbered 968.645, and 968.645 (1)  
15 (a) and (b), (2), (2m), (3), (4) and (5), as renumbered, are amended to read:

16 968.645 (1) (a) "Custody" means actual custody of a person under a sentence  
17 of imprisonment, custody of a probationer, parolee, or person on extended  
18 supervision by the department of corrections, actual or constructive custody of a  
19 person pursuant to a dispositional order under ch. 938, supervision of a person,  
20 whether in institutional care or on conditional release, pursuant to a commitment  
21 order under s. ~~971.17~~ subch. III of ch. 975, and supervision of a person under ch. 980,  
22 whether in detention before trial or while in institutional care or on supervised  
23 release pursuant to a commitment order.

24 (b) "Discharge date" means the date on which a person is released or discharged  
25 from custody that resulted from a criminal action, a delinquency proceeding under

1 ch. 938, or a commitment proceeding under ~~s. 971.17~~ subch. III of ch. 975 or ch. 980  
2 or, if the person is serving consecutive sentences of imprisonment, the date on which  
3 the person is released or discharged from custody under all of the sentences.

4 (2) Except as provided in sub. (3), if ~~physical evidence that is in the possession~~  
5 ~~of a law enforcement agency includes~~ possesses any biological material that was  
6 collected in connection with a criminal investigation that resulted in a criminal  
7 conviction, delinquency adjudication, or commitment under ~~s. 971.17~~ subch. III of ch.  
8 975 or s. 980.06 and the biological material is ~~from a victim of the offense that was~~  
9 ~~the subject of the criminal investigation or may reasonably be used to incriminate~~  
10 ~~or exculpate any person for the offense~~, the law enforcement agency shall preserve  
11 the ~~physical evidence~~ biological material until every person in custody as a result of  
12 the conviction, adjudication, or commitment has reached his or her discharge date.

13 (2m) A law enforcement agency shall retain evidence biological material to  
14 which sub. (2) applies in an amount and manner sufficient to develop a  
15 deoxyribonucleic acid profile, as defined in s. 939.74 (2d) (a), from ~~the biological~~  
16 ~~material contained in or included on the evidence~~ it.

17 (3) Subject to sub. (5), a law enforcement agency may destroy evidence ~~that~~  
18 ~~includes~~ biological material before the expiration of the time period specified in sub.  
19 (2) if all of the following apply:

20 (a) The law enforcement agency sends a notice of its intent to destroy the  
21 evidence biological material to all persons who remain in custody as a result of the  
22 criminal conviction, delinquency adjudication, or commitment, and to either the  
23 attorney of record for each person in custody or the state public defender.

24 (b) No person who is notified under par. (a) does either of the following within  
25 90 days after the date on which the person ~~received~~ receives the notice:

1 1. Files a motion for testing of the evidence biological material under s. 974.07  
2 (2).

3 2. Submits a written request ~~for retention of the evidence to preserve the~~  
4 biological material to the law enforcement agency or district attorney.

5 (c) No other provision of federal or state law requires the law enforcement  
6 agency to ~~retain the evidence~~ preserve the biological material.

7 (4) A notice provided under sub. (3) (a) shall clearly inform the recipient that  
8 the evidence biological material will be destroyed unless, within 90 days after the  
9 date on which the person receives the notice, either a motion for testing of the  
10 evidence biological material is filed under s. 974.07 (2) or a written request for  
11 ~~retention of the evidence to preserve the biological material~~ is submitted to the law  
12 enforcement agency.

13 (5) If, after providing notice under sub. (3) (a) of its intent to destroy evidence  
14 biological material, a law enforcement agency receives a written request for  
15 ~~retention of the evidence to preserve the biological material~~, the law enforcement  
16 agency shall ~~retain the evidence~~ preserve the biological material until the discharge  
17 date of the person who made the request or on whose behalf the request was made,  
18 subject to a court order issued under s. 974.07 (7), (9) (a), or (10) (a) 5., unless the court  
19 orders destruction or transfer of the evidence biological material under s. 974.07 (9)  
20 (b) or (10) (a) 5.



\*\*\*NOTE: This section reconciles -0224/P2 and -4635/P1.

21 SECTION 462. 968.21 of the statutes is renumbered 968.465 (4) and amended  
22 to read:

23 968.465 (4) SEARCH WARRANT; SECRECY. A ~~judge~~ <sup>person</sup> <sup>or acting on</sup> issuing a search warrant shall  
24 be issued do so with all practicable secrecy, and the ~~complaint~~, affidavit or testimony



\*\*\* Note: Should s. 968.375 (12) be amended  
so that the text mirrors this statute as amended?

1 upon which it is based shall not be filed with the clerk or made public in any way until  
2 the search warrant is executed.

3 SECTION 463. 968.22 of the statutes is renumbered 968.515.

4 SECTION 464. 968.23 of the statutes is renumbered 968.525.

5 SECTION 465. 968.24 of the statutes is renumbered 968.555.

6 SECTION 466. 968.25 of the statutes is renumbered 968.565 and amended to  
7 read:

8 **968.565 Search during temporary questioning.** When a law enforcement  
9 officer has stopped a person for temporary questioning pursuant to under s. 968.24  
10 968.555 and reasonably suspects that ~~he or she~~ the law enforcement officer or  
11 another individual is in danger of physical injury, the law enforcement officer may  
12 search ~~such~~ the person for weapons or any instrument ~~or~~, article, or substance  
13 readily capable of causing physical injury and of a sort not ordinarily carried in public  
14 places by law abiding persons. If the law enforcement officer finds such a weapon  
15 or instrument, or any other property possession of which the law enforcement officer  
16 reasonably believes may constitute the commission of a crime, or which may  
17 constitute a threat to ~~his or her~~ the safety of the law enforcement officer, the law  
18 enforcement officer may take it and keep it until the completion of the questioning,  
19 at which time the law enforcement officer shall either return it, if lawfully possessed,  
20 or arrest the person so questioned.

21 SECTION 467. 968.255 (title) of the statutes is renumbered 968.585 (title).

22 SECTION 468. 968.255 (1) of the statutes is renumbered 968.585 (1), and  
23 968.585 (1) (a) 3. and 4. and (b), as renumbered, are amended to read:

1           968.585 (1) (a) 3. Taken into custody under s. 938.19 and there are reasonable  
2 grounds to believe the juvenile has committed an act which if committed by an adult  
3 would be covered a misdemeanor under subd. 1. ~~or 2.~~ or a felony.

4           4. Arrested for any misdemeanor not specified in subd. 2., any other violation  
5 of state law punishable by forfeiture, or any local ordinance, if there is probable cause  
6 to believe the person is concealing a weapon or a thing which may constitute evidence  
7 of the offense for which he or she is detained.

8           (b) "Strip search" means a search in which a detained person's genitals, pubic  
9 area, buttock, or anus, or a detained female person's breast, is uncovered and either  
10 is exposed to view or is touched by a person conducting the search.

11           **SECTION 469.** 968.255 (2) (intro.) of the statutes is renumbered 968.585 (2)  
12 (intro.) and amended to read:

13           968.585 (2) (intro.) No person may be the subject of another to a strip search  
14 unless ~~he or she is a detained person and if~~ all of the following apply:

15           **SECTION 470.** 968.255 (2) (a) of the statutes is renumbered 968.585 (2) (ar) and  
16 amended to read:

17           968.585 (2) (ar) The person conducting the search is of the same sex as the  
18 person detained, unless the search is a body cavity search ~~conducted~~ that is not  
19 prohibited under sub. (3);.

20           **SECTION 471.** 968.255 (2) (b), (c), (d) and (e) of the statutes are renumbered  
21 968.585 (2) (b), (c), (d) and (e) and amended to read:

22           968.585 (2) (b) The detained person is not exposed to the view of any person  
23 whose presence is not reasonably needed for conducting the search;.

24           (c) The search is not reproduced through a visual or sound recording;.

1 (d) A person conducting the search has obtained the prior written ~~permission~~  
2 authorization of the chief, ~~or sheriff or law enforcement administrator~~ of the  
3 jurisdiction where the person is detained, or his or her designee, unless there is  
4 probable cause to believe that the detained person is concealing a weapon; ~~and,~~

5 (e) ~~A~~ The person conducting the search prepares a report identifying the  
6 person detained, all persons conducting the search, the time, date, and place of the  
7 search, and the written authorization required by par. (d), and provides a copy of the  
8 report to the person detained.

9 **SECTION 472.** 968.255 (3) of the statutes is renumbered 968.585 (3) and  
10 amended to read:

11 968.585 (3) No person other than a physician, physician assistant, or  
12 registered nurse licensed to practice in this state may conduct a body cavity search.

13 **SECTION 473.** 968.255 (4) of the statutes is renumbered 946.77 and amended  
14 to read:

15 **946.77 Improper search of a detained person.** ~~A person who~~ Whoever  
16 intentionally violates this section may be fined not more than \$1,000 or imprisoned  
17 ~~not more than 90 days or both s. 968.585 if the person who is subject to the search~~  
18 is a detained person is guilty of a Class B misdemeanor.

19 **SECTION 474.** 968.255 (5) of the statutes is renumbered 968.585 (5).

20 **SECTION 475.** 968.255 (6) of the statutes is renumbered 968.585 (6) and  
21 amended to read:

22 968.585 (6) A law enforcement agency, as defined in s. 165.83 (1) (b), may  
23 promulgate rules concerning strip searches ~~which at least~~ that, at a minimum, meet  
24 the ~~minimum~~ requirements of this section.

1           **SECTION 476.** 968.255 (7) of the statutes is renumbered 968.585 (7) and  
2 amended to read:

3           968.585 (7) This section does not apply to a search of any person who meets any  
4 of the following criteria:

5           (a) ~~Is~~ The person is serving a sentence, pursuant to a conviction, in a jail, state  
6 prison, or house of correction.

7           (b) ~~Is~~ The person is placed in or transferred to a juvenile correctional facility,  
8 as defined in s. 938.02 (10p), or a secured residential care center for children and  
9 youth, as defined in s. 938.02 (15g).

10           (c) ~~Is~~ The person is committed, transferred, or admitted under ch. 975, 2009  
11 stats., or ch. 51, 971 or 975. 2011

12           (d) ~~Is~~ The person is confined as a condition of probation under s. 973.09 (4).

13           **SECTION 477.** 968.256 of the statutes is renumbered 968.59 and amended to  
14 read:

15           **968.59 Search of ~~physically disabled person~~ persons with a physical**  
16 **disability.** (1) In this section, "physically disabled person with a physical disability"  
17 means a person who requires an assistive device for mobility, including, but not  
18 limited to, a wheelchair, brace, crutch, or artificial limb.

19           (2) A search of a ~~physically disabled person~~ with a physical disability shall be  
20 conducted in a careful manner. If a search of a ~~physically disabled person~~ with a  
21 physical disability requires the removal of an assistive device or involves a person  
22 lacking sensation in some portion of his or her body, the search shall be conducted  
23 with extreme care by a person who has had training in handling ~~physically disabled~~  
24 persons with a physical disability.

1       **SECTION 478.** 968.26 of the statutes is renumbered 968.105, and 968.105 (3),  
2 as renumbered, is amended to read:

3       968.105 (3) The extent to which the judge may proceed in an examination  
4 under sub. (1) or (2) is within the judge's discretion. The examination ~~may be~~  
5 ~~adjourned and may~~ shall be secret unless the judge orders otherwise. Unless the  
6 judge orders the proceeding not to be secret, the record and the testimony taken is  
7 not open to public inspection. The record and testimony taken is open to inspection  
8 by the district attorney, and, if a criminal prosecution follows, it is subject to  
9 discovery under s. 971.43 (2) (br). Any witness examined under this section may  
10 have counsel present at the examination but the counsel shall not be allowed to  
11 examine his or her client, cross-examine other witnesses, or argue before the judge.  
12 Subject to s. 971.23, if the proceeding is secret, the record of the proceeding and the  
13 testimony taken shall not be open to inspection by anyone except the district attorney  
14 unless it is used by the prosecution at the preliminary hearing or the trial of the  
15 accused and then only to the extent that it is so used. A court, on the motion of a  
16 district attorney, may compel a person to testify or produce evidence under s. 972.08  
17 967.17 (1). The person is immune from prosecution as provided in s. ~~972.08~~ 967.17  
18 (1), subject to the restrictions under s. ~~972.08~~ 967.18.

\* \*\*\*\*NOTE: This section reconciles -0012/P2, -0228/P2, and -3257/P2.

19       **SECTION 479.** 968.265 of the statutes is renumbered 968.595.

20       **SECTION 480.** 968.27 (intro.) of the statutes is renumbered 968.305 (intro.) and  
21 amended to read:

22       **968.305 Definitions.** (intro.) In ss. ~~968.28 to 968.375~~ this subchapter:

23       **SECTION 481.** 968.27 (1) of the statutes is renumbered 968.305 (1) and amended  
24 to read:

1           968.305 (1) "Aggrieved person" means a person who was a party to any  
2 intercepted wire, electronic, or oral communication or a person against whom the  
3 interception was directed.

4           **SECTION 482.** 968.27 (2) of the statutes is renumbered 968.305 (2).

5           **SECTION 483.** 968.27 (3) of the statutes is renumbered 968.305 (3) and amended  
6 to read:

7           968.305 (3) "Contents" when used with respect to any wire, electronic, or oral  
8 communication, includes any information concerning the substance, purport, or  
9 meaning of that communication.

10          **SECTION 484.** 968.27 (4) of the statutes is renumbered 968.305 (4), and 968.305  
11 (4) (intro.), as renumbered, is amended to read:

12          968.305 (4) (intro.) "Electronic communication" means any transfer of signs,  
13 signals, writing, images, sounds, data, or intelligence of any nature wholly or  
14 partially transmitted by a wire, radio, electromagnetic, photoelectronic, or  
15 photooptical system. "Electronic communication" does not include any of the  
16 following:

17          **SECTION 485.** 968.27 (5) of the statutes is renumbered 968.305 (5).

18          **SECTION 486.** 968.27 (6) of the statutes is renumbered 968.305 (6) and amended  
19 to read:

20          968.305 (6) "Electronic communications system" means any wire, radio,  
21 electromagnetic, photooptical, or photoelectronic facilities for the transmission of  
22 electronic communications, and any computer facilities or related electronic  
23 equipment for the electronic storage of those communications.

24          **SECTION 487.** 968.27 (7) of the statutes is renumbered 968.305 (7), and 968.305  
25 (7) (intro.) and (a) (intro.) and 1., as renumbered, are amended to read:

1           968.305 (7) (intro.) "Electronic, mechanical, or other device" means any device  
2   or apparatus which can be used to intercept a wire, electronic, or oral communication  
3   other than one of the following:

4           (a) (intro.) Any telephone or telegraph instrument, equipment, or facilities, or  
5   any component thereof, which is of a telephone or telegraph instrument, equipment,  
6   or facilities, that is any of the following:

7           1. Furnished to the subscriber or user by a provider of electronic or wire  
8   communication service in the ordinary course of its business and being used by the  
9   subscriber or user in the ordinary course of its business or furnished by the  
10   subscriber or user for connection to the facilities of the service and used in the  
11   ordinary course of its business; ~~or.~~

12           **SECTION 488.** 968.27 (8) of the statutes is renumbered 968.305 (8).

13           **SECTION 489.** 968.27 (9) of the statutes is renumbered 968.305 (9) and amended  
14   to read:

15           968.305 (9) "Intercept" means the aural or other acquisition of the contents of  
16   any wire, electronic, or oral communication through the use of any electronic,  
17   mechanical, or other device.

18           **SECTION 490.** 968.27 (10) of the statutes is renumbered 968.305 (10) and  
19   amended to read:

20           968.305 (10) "Investigative or law enforcement officer" means any officer of  
21   this state or political subdivision thereof, who is empowered by the laws of this state  
22   to conduct investigations of or to make arrests for offenses enumerated in ss. ~~968.28~~  
23   968.315 to ~~968.37~~ 968.405, and any attorney authorized by law to prosecute or  
24   participate in the prosecution of those offenses.

1       **SECTION 491.** 968.27 (11) of the statutes is renumbered 968.305 (11) and  
2 amended to read:

3       968.305 (11) "Judge" means the judge sitting at the time an application is made  
4 under s. ~~968.30~~ 968.335 or his or her successor.

5       **SECTION 492.** 968.27 (12) and (13) of the statutes are renumbered 968.305 (12)  
6 and (13).

7       **SECTION 493.** 968.27 (14) of the statutes is renumbered 968.305 (14).

8       **SECTION 494.** 968.27 (14g) of the statutes is renumbered 968.305 (14g).

9       **SECTION 495.** 968.27 (15) of the statutes is renumbered 968.305 (15).

10       **SECTION 496.** 968.27 (16) (intro.), (a) and (b) of the statutes are consolidated,  
11 renumbered 968.305 (16) and amended to read:

12       968.305 (16) "User" means any person ~~who or entity that:~~ (a) ~~Uses~~ uses an  
13 electronic communication service; and (b) ~~Is duly~~ is authorized by the provider of the  
14 service to engage in that use.

15       **SECTION 497.** 968.27 (17) of the statutes is renumbered 968.305 (17).

16       **SECTION 498.** 968.28 of the statutes is renumbered 968.315 and amended to  
17 read:

18       **968.315 Application for court order to intercept communications.** The  
19 attorney general together with the district attorney of any county may approve a  
20 request of an investigative or law enforcement officer to apply to the chief judge of  
21 the judicial administrative district for the county where the interception is to take  
22 place for an order authorizing or approving the interception of wire, electronic, or  
23 oral communications. The chief judge may under s. ~~968.30~~ 968.335 grant an order  
24 authorizing or approving the interception of wire, electronic, or oral communications  
25 by investigative or law enforcement officers having responsibility for the



1 investigation of the offense for which the application is made. The authorization  
2 shall be permitted only if the interception may provide or has provided evidence of  
3 the commission of the offense of homicide, felony murder, kidnapping, commercial  
4 gambling, bribery, extortion, dealing in controlled substances or controlled  
5 substance analogs, a computer crime that is a felony under s. 943.70, or any  
6 conspiracy to commit any of the foregoing offenses.

7 **SECTION 499.** 968.29 of the statutes is renumbered 968.325 and amended to  
8 read:

ms 145 9 **968.325 Authorization for disclosure and use of intercepted wire,  
10 electronic, or oral communications.** (1) Any investigative or law enforcement  
11 officer who, by any means authorized by ss. ~~968.28~~ 968.315 to ~~968.37~~ 968.405 or 18  
12 USC 2510 to 2520, has obtained knowledge of the contents of any wire, electronic,  
13 or oral communication, or evidence derived therefrom, may disclose the contents to  
14 another investigative or law enforcement officer only to the extent that the disclosure  
15 is appropriate to the proper performance of the official duties of the officer making  
16 or receiving the disclosure.

17 (2) Any investigative or law enforcement officer who, by any means authorized  
18 by ss. ~~968.28~~ 968.315 to ~~968.37~~ 968.405 or 18 USC 2510 to 2520, has obtained  
19 knowledge of the contents of any wire, electronic, or oral communication or evidence  
20 derived therefrom may use the contents only to the extent the use is appropriate to  
21 the proper performance of the officer's official duties.

22 (3) (a) Any person who has received, by any means authorized by ss. ~~968.28~~  
23 968.315 to ~~968.37~~ 968.405 or 18 USC 2510 to 2520 or by a like statute of any other  
24 state, any information concerning a wire, electronic, or oral communication or  
25 evidence derived therefrom intercepted in accordance with ss. ~~968.28~~ 968.315 to

1 ~~968.37~~ 968.405, may disclose the contents of that communication or that derivative  
2 evidence only while giving testimony under oath or affirmation in any proceeding in  
3 any court or before any magistrate or grand jury in this state, or in any court of the  
4 United States or of any state, or in any federal or state grand jury proceeding.

5 (b) In addition to the disclosure provisions of par. (a), any person who has  
6 received, in the manner described under s. ~~968.31~~ 968.345 (2) (b), any information  
7 concerning a wire, electronic, or oral communication or evidence derived therefrom,  
8 may disclose the contents of that communication or that derivative evidence while  
9 giving testimony under oath or affirmation in any proceeding described in par. (a) in  
10 which a person is accused of any act constituting a felony, and only if the party who  
11 consented to the interception is available to testify at the proceeding or if another  
12 witness is available to authenticate the recording.

13 (4) No otherwise privileged wire, electronic, or oral communication intercepted  
14 in accordance with, or in violation of, ss. ~~968.28~~ 968.315 to ~~968.37~~ 968.405 or 18 USC  
15 2510 to 2520, may lose its privileged character.

16 (5) When an investigative or law enforcement officer, while engaged in  
17 intercepting wire, electronic, or oral communications in the manner authorized,  
18 intercepts wire, electronic, or oral communications relating to offenses other than  
19 those specified in the order of authorization or approval, the contents thereof, and  
20 evidence derived therefrom, may be disclosed or used as provided in subs. (1) and (2).  
21 The contents and any evidence derived therefrom may be used under sub. (3) when  
22 authorized or approved by the judge who acted on the original application where the  
23 judge finds on subsequent application, made as soon as practicable but no later than  
24 48 hours, that the contents were otherwise intercepted in accordance with ss. ~~968.28~~  
25 968.315 to ~~968.37~~ 968.405 or 18 USC 2510 to 2520 or by a like statute.

1       **SECTION 500.** 968.30 of the statutes is renumbered 968.335, and 968.335 (title),  
2 (1) (intro.), (b) (intro.), 1., 2. and 3. and (e), (3) (intro.), (a), (b) and (d), (4) (intro.), (a),  
3 (b), (c) and (d), (5), (6), (7) (a) and (b), (8), (9) and (10), as renumbered, are amended  
4 to read:

5       **968.335 (title) Procedure for interception of wire, electronic, or oral**  
6 **communications.** (1) (intro.) Each application for an order authorizing or  
7 approving the interception of a wire, electronic, or oral communication shall be made  
8 in writing upon oath or affirmation to the court and shall state the applicant's  
9 authority to make the application and may be upon personal knowledge or  
10 information and belief. Each application shall include the following information:

11       (b) (intro.) A full and complete statement of the facts and circumstances relied  
12 upon by the applicant, to justify the applicant's belief that an order should be issued,  
13 including all of the following:

14       1. Details of the particular offense that has been, is being, or is about to be  
15 committed;

16       2. A particular description of the nature and location of the facilities from which  
17 or the place where the communication is to be intercepted;

18       3. A particular description of the type of communications sought to be  
19 intercepted; ~~and.~~

20       (e) A full and complete statement of the facts concerning all previous  
21 applications known to the individual authorizing and making the application, made  
22 to any court for authorization to intercept, or for approval of interceptions of, wire,  
23 electronic, or oral communications involving any of the same persons, facilities, or  
24 places specified in the application, and the action taken by the court on each such  
25 application; ~~and.~~

(3) (intro.) Upon the application the court may enter an ex parte order, as requested or as modified, authorizing or approving interception of wire, electronic, or oral communications, if the court determines on the basis of the facts submitted by the applicant that all of the following exist:

(a) There is probable cause for belief that an individual is committing, has committed, or is about to commit a particular offense enumerated in s. 968.28 968.315.

(b) There is probable cause for belief that particular communications concerning that the offense under par. (a) will be obtained through such interception.

(d) There is probable cause for belief that the facilities from which, or the place where, the wire, electronic, or oral communications are to be intercepted are being used, or are about to be used, in connection with the commission of the offense under par. (a), or are leased to, listed in the name of, or commonly used by the person.

(4) (intro.) Each order authorizing or approving the interception of any wire, electronic, or oral communication shall specify all of the following:

(a) The identity of the person, if known, whose communications are to be intercepted;

(b) The nature and location of the communications facilities which, or the place where authority to intercept is granted and the means by which such interceptions shall be made;

(c) A particular description of the type of communication sought to be intercepted and a statement of the particular offense to which it relates;

(d) The identity of the agency authorized to intercept the communications and of the person authorizing the application; ~~and~~.

1           (5) No order entered under this section may authorize or approve the  
2 interception of any wire, electronic, or oral communication for any period longer than  
3 is necessary to achieve the objective of the authorization, nor in any event longer  
4 than 30 days. The 30-day period begins on the earlier of the day on which the  
5 investigative or law enforcement officer first begins to conduct an interception under  
6 the order or 10 days after the order is entered. Extensions of an order may be  
7 granted, but only upon application for an extension made in accordance with sub. (1)  
8 and the court making the findings required by sub. (3). The period of extension shall  
9 be no longer than the authorizing judge deems necessary to achieve the purposes for  
10 which it was granted and in no event be for longer than 30 days. Every order and  
11 extension thereof shall contain a provision that the authorization to intercept shall  
12 be executed as soon as practicable, shall be conducted in such a way as to minimize  
13 the interception of communications not otherwise subject to interception under this  
14 chapter, and must terminate upon attainment of the authorized objective, or in any  
15 event in 30 days. In the event the intercepted communication is in a code or foreign  
16 language, and an expert in that foreign language or code is not reasonably available  
17 during the interception period, minimization may be accomplished as soon as  
18 practicable after the interception.

19           (6) Whenever an order authorizing interception is entered pursuant to ss.  
20 ~~968.28~~ 968.315 to ~~968.33~~ 968.365, the order may require reports to be made to the  
21 court which issued the order showing what progress has been made toward  
22 achievement of the authorized objective and the need for continued interception.  
23 Such reports shall be made at such intervals as the court requires.

24           (7) (a) The contents of any wire, electronic, or oral communication intercepted  
25 by any means authorized by ss. ~~968.28~~ 968.315 to ~~968.37~~ 968.405 shall, if possible,

1 be recorded on tape or wire or other comparable device. The recording of the contents  
2 of any wire, electronic, or oral communication under this subsection shall be done in  
3 such way as will protect the recording from editing or other alterations. Immediately  
4 upon the expiration of the period of the order or extensions thereof all such  
5 recordings and records of an intercepted wire, electronic, or oral communication  
6 shall be filed with the court issuing the order and the court shall order the same to  
7 be sealed. Custody of the recordings and records shall be wherever the judge  
8 handling the application shall order. They shall not be destroyed except upon an  
9 order of the issuing or denying judge and in any event shall be properly kept and  
10 preserved for 10 years. Duplicate recordings and other records may be made for use  
11 or disclosure pursuant to the provisions for investigations under s. ~~968.29~~ 968.325  
12 (1) and (2). The presence of the seal provided for by this subsection, or a satisfactory  
13 explanation for the absence thereof, shall be a prerequisite for the use or disclosure  
14 of the contents of any wire, electronic, or oral communication or evidence derived  
15 therefrom under s. ~~968.29~~ 968.325 (3).

16 (b) Applications made and orders granted under ss. ~~968.28~~ 968.315 to ~~968.33~~  
17 968.365 together with all other papers and records in connection therewith shall be  
18 ordered sealed by the court. Custody of the applications, orders, and other papers  
19 and records shall be wherever the judge shall order. Such applications ~~and, orders,~~  
20 and other papers and records shall be disclosed only upon a showing of good cause  
21 before the judge and shall not be destroyed except on order of the issuing or denying  
22 judge, and in any event shall be kept for 10 years.

23 (8) The contents of any intercepted wire, electronic, or oral communication or  
24 evidence derived therefrom shall not be received in evidence or otherwise disclosed  
25 in any trial, hearing, or other proceeding in any court of this state unless each party,

1 not less than 10 days before the trial, hearing, or proceeding, has been furnished with  
2 a copy of the court order, and accompanying application, under which the  
3 interception was authorized or approved. This 10-day period may be waived by the  
4 judge if he or she finds that it was not possible to furnish the party with the above  
5 information 10 days before the trial, hearing, or proceeding and that the party will  
6 not be prejudiced by the delay in receiving the information.

7 (9) (a) Any aggrieved person in any trial, hearing, or proceeding in or before  
8 any court, department, officer, agency, regulatory body, or other authority of this  
9 state, or a political subdivision thereof, may move before the trial court or the court  
10 granting the original warrant to suppress the contents of any intercepted wire,  
11 electronic, or oral communication, or evidence derived therefrom, on the grounds  
12 that the communication was unlawfully intercepted; the order of authorization or  
13 approval under which it was intercepted is insufficient on its face; or the interception  
14 was not made in conformity with the order of authorization or approval. The motion  
15 shall be made before the trial, hearing, or proceeding unless there was no  
16 opportunity to make the motion or the person was not aware of the grounds of the  
17 motion. If the motion is granted, the contents of the intercepted wire, electronic, or  
18 oral communication, or evidence derived therefrom, shall be treated as having been  
19 obtained in violation of ss. ~~968.28~~ 968.315 to ~~968.37~~ 968.405. The judge may, upon  
20 the filing of the motion by the aggrieved person, make available to the aggrieved  
21 person or his or her counsel for inspection such portions of the intercepted  
22 communication or evidence derived therefrom as the judge determines to be in the  
23 interest of justice.

24 (b) In addition to any other right to appeal, the state shall have the right to  
25 appeal from any of the following:

1. ~~From an~~ An order granting a motion to suppress made under par. (a) if the attorney general or district attorney certifies to the judge or other official granting such motion that the appeal is not entered for purposes of delay and shall be diligently prosecuted as in the case of other interlocutory appeals or under such rules as the supreme court adopts; ~~or,~~

2. ~~From an~~ An order denying an application for an order of authorization or approval, and such an appeal shall be ex parte and shall be in camera in preference to all other pending appeals in accordance with rules promulgated by the supreme court.

(10) Nothing in ss. ~~968.28~~ 968.315 to ~~968.375~~ 968.405 shall be construed to allow the interception of any wire, electronic, or oral communication between an attorney and a client.

**SECTION 501.** Subchapter IV (title) of chapter 968 [precedes 968.305] of the statutes is created to read:

## CHAPTER 968

## SUBCHAPTER IV

## INTERCEPTION OF ELECTRONIC

## COMMUNICATION

**SECTION 502.** 968.31 of the statutes is renumbered 968.345, and 968.345 (title), (1), (2) (intro.), (a), (b), (c), (e), (f), (i) and (j), (2m) (intro.), (a) and (b) and (3), as renumbered, are amended to read:

**968.345 (title) Interception and disclosure of wire, electronic, or oral communications prohibited.** (1) Except as otherwise specifically provided in ss. 196.63 or ~~968.28~~ 968.315 to ~~968.30~~ 968.335, whoever commits any of the following acts ~~enumerated in this section~~ is guilty of a Class H felony:



1 (a) Intentionally intercepts, attempts to intercept, or procures any other person  
2 to intercept or attempt to intercept, any wire, electronic, or oral communication.

3 (b) Intentionally uses, attempts to use, or procures any other person to use or  
4 attempt to use any electronic, mechanical, or other device to intercept any oral  
5 communication.

6 (c) Discloses, or attempts to disclose, to any other person the contents of any  
7 wire, electronic, or oral communication, knowing or having reason to know that the  
8 information was obtained through the interception of a wire, electronic, or oral  
9 communication in violation of this ~~section~~ subsection or under circumstances  
10 constituting violation of this ~~section~~ subsection.

11 (d) Uses, or attempts to use, the contents of any wire, electronic, or oral  
12 communication, knowing or having reason to know that the information was  
13 obtained through the interception of a wire, electronic, or oral communication in  
14 violation of this ~~section~~ subsection or under circumstances constituting violation of  
15 this ~~section~~ subsection.

16 (e) Intentionally discloses the contents of any oral, electronic, or wire  
17 communication obtained by authority of ss. ~~968.28, 968.29~~ 968.315, 968.325, and  
18 ~~968.30~~ 968.335, except as therein provided.

19 (f) Intentionally alters any wire, electronic, or oral communication intercepted  
20 on tape, wire, or other device.

21 **(2) (intro.)** It is not unlawful under ss. ~~968.28~~ 968.315 to ~~968.37~~ 968.405:

22 (a) For an operator of a switchboard, or an officer, employee, or agent of any  
23 provider of a wire or electronic communication service, whose facilities are used in  
24 the transmission of a wire or electronic communication to intercept, disclose, or use  
25 that communication in the normal course of his or her employment while engaged

1 in any activity which is a necessary incident to the rendition of his or her service or  
2 to the protection of the rights or property of the provider of that service, except that  
3 a provider of a wire or electronic communication service shall not utilize service  
4 observing or random monitoring except for mechanical or service quality control  
5 checks.

6 (b) For a person acting under color of law to intercept a wire, electronic, or oral  
7 communication, where the person is a party to the communication or one of the  
8 parties to the communication has given prior consent to the interception.

9 (c) For a person not acting under color of law to intercept a wire, electronic, or  
10 oral communication where the person is a party to the communication or where one  
11 of the parties to the communication has given prior consent to the interception unless  
12 the communication is intercepted for the purpose of committing any criminal or  
13 tortious act in violation of the constitution or laws of the United States or of any state  
14 or for the purpose of committing any other injurious act.

15 (e) For any person to intercept any radio communication that is transmitted  
16 by any of the following:

17 1. ~~By any~~ Any station for the use of the general public, or that relates to ships,  
18 aircraft, vehicles, or persons in distress;.

19 2. ~~By any~~ Any governmental, law enforcement, civil defense, private land  
20 mobile, or public safety communications system, including police and fire, readily  
21 accessible to the general public;.

22 3. ~~By a~~ A station operating on an authorized frequency within the bands  
23 allocated to the amateur, citizens band, or general mobile radio services; ~~or~~.

24 4. ~~By any~~ Any marine or aeronautical communications system.

25 (f) For any person to engage in any conduct that is any of the following:

1           1. ~~Is prohibited~~ Prohibited by section 633 of the communications act of 1934;  
2     ~~or,~~

3           2. ~~Is excepted~~ Excepted from the application of section 705 (a) of the  
4     communications act of 1934 by section 705 (b) of that act.

5           (i) To use a pen register or a trap and trace device as authorized under ss. ~~968.34~~  
6     968.376 to 968.37; or 968.405.

7           (j) For a provider of electronic communication service to record the fact that a  
8     wire or electronic communication was initiated or completed in order to protect the  
9     provider, another provider furnishing service toward the completion of the wire or  
10    electronic communication, or a user of that service, from fraudulent, unlawful, or  
11    abusive use of the service.

12          **(2m)** (intro.) Any person whose wire, electronic, or oral communication is  
13    intercepted, disclosed, or used in violation of ss. ~~968.28 968.315 to 968.37 968.405~~  
14    shall have a civil cause of action against any person who intercepts, discloses, or uses,  
15    or procures any other person to intercept, disclose, or use, the communication, and  
16    shall be entitled to recover from any such person all of the following:

17          (a) Actual damages, but not less than liquidated damages computed at the rate  
18    of \$100 a day for each day of violation or \$1,000, whichever is higher;

19          (b) Punitive damages; ~~and.~~

20          **(3)** Good faith reliance on a court order or on s. ~~968.30 968.335~~ (7) shall  
21    constitute a complete defense to any civil or criminal action brought under ss. ~~968.28~~  
22    968.315 to 968.37 968.405.

23          **SECTION 503.** 968.32 of the statutes is renumbered 968.355 and amended to  
24    read:

1           **968.355 Forfeiture of contraband devices.** Any electronic, mechanical, or  
2 other intercepting device used in violation of s. ~~968.31~~ 968.345 (1) may be seized as  
3 contraband by any peace officer and forfeited to this state in an action by the  
4 department of justice under ch. 778.

5           **SECTION 504.** 968.33 of the statutes is renumbered 968.365.

6           **SECTION 505.** 968.34 of the statutes is renumbered 968.376, and 968.376 (1)  
7 and (2), as renumbered, are amended to read:

8           968.376 (1) Except as provided in this section, no person may install or use a  
9 pen register or a trap and trace device without first obtaining a court order under s.  
10 ~~968.36~~ 968.395 or 18 USC 3123 or 50 USC 1801 to 1811.

11           (2) The prohibition of sub. (1) does not apply with respect to the use of a pen  
12 register or a trap and trace device by a provider of electronic or wire communication  
13 service if any of the following applies:

14           (a) ~~Relating~~ The use relates to the operation, maintenance, and testing of a wire  
15 or electronic communication service or to the protection of the rights or property of  
16 the provider, or to the protection of users of that service from abuse of service or  
17 unlawful use of service;

18           (b) ~~To~~ The use is to record the fact that a wire or electronic communication was  
19 initiated or completed in order to protect the provider, another provider furnishing  
20 service toward the completion of the wire communication, or a user of that service,  
21 from fraudulent, unlawful, or abusive use of service; ~~or~~.

22           (c) ~~Where the~~ The consent of the user of that service has been obtained.

\*\*\*\*NOTE: 2009 Wisconsin Act 349 created s. 968.375. I renumbered s. 968.34 to  
be 968.376 (in previous versions it was renumbered to be 968.375). Where would you like  
s. 968.375, as created by 2009 Wisconsin Act 349, to appear in the reorganized statutes?

1       **SECTION 506.** 968.35 of the statutes is renumbered 968.385, and 968.385 (1),  
2 as renumbered, is amended to read:

3       968.385 (1) The attorney general or a district attorney may make application  
4 for an order or an extension of an order under s. ~~968.36~~ 968.395 authorizing or  
5 approving the installation and use of a pen register or a trap and trace device, in  
6 writing under oath or equivalent affirmation, to a ~~circuit~~ court for the county where  
7 the device is to be located.

8       **SECTION 507.** 968.36 of the statutes is renumbered 968.395, and 968.395 (1),  
9 (2) (e), (4) and (5), as renumbered, are amended to read:

10       968.395 (1) Upon an application made under s. ~~968.35~~ 968.385, the court shall  
11 enter an ex parte order authorizing the installation and use of a pen register or a trap  
12 and trace device within the jurisdiction of the court if the court finds that the  
13 applicant has certified to the court that the information likely to be obtained by the  
14 installation and use is relevant to an ongoing criminal investigation.

15       (2) (e) Direct, upon the request of the applicant, the furnishing of information,  
16 facilities and technical assistance necessary to accomplish the installation of the pen  
17 register or trap and trace device under s. ~~968.37~~ 968.405.

18       (4) Extensions of the order may be granted, but only upon an application for  
19 an order under s. ~~968.35~~ 968.385 and upon the judicial finding required by sub. (1).  
20 The period of extension shall be for a period not to exceed 60 days.

21       (5) An order authorizing or approving the installation and use of a pen register  
22 or a trap and trace device shall direct ~~that~~ all of the following:

23       (a) ~~The~~ That the order be sealed until otherwise ordered by the court; ~~and~~

24       (b) ~~The~~ That the person owning or leasing the line to which the pen register or  
25 a trap and trace device is attached, or who has been ordered by the court to provide

1 assistance to the applicant, not disclose the existence of the pen register or trap and  
2 trace device or the existence of the investigation to the listed subscriber, or to any  
3 other person, unless or until otherwise ordered by the court.

4 **SECTION 508.** 968.37 of the statutes is renumbered 968.405, and 968.405 (1),  
5 (2), (3), (4) and (5), as renumbered, are amended to read:

6 968.405 (1) Upon the request of the attorney general, a district attorney, or an  
7 officer of a law enforcement agency authorized to install and use a pen register under  
8 ss. ~~968.28 968.315~~ to ~~968.37 968.405~~, a provider of wire or electronic communication  
9 service, landlord, custodian, or other person shall furnish the investigative or law  
10 enforcement officer forthwith all information, facilities, and technical assistance  
11 necessary to accomplish the installation of the pen register unobtrusively and with  
12 a minimum of interference with the services that the person so ordered by the court  
13 accords the party with respect to whom the installation and use is to take place, if  
14 the assistance is directed by a court order under s. ~~968.36 968.395~~ (5) (b).

15 (2) Upon the request of the attorney general, a district attorney, or an officer  
16 of a law enforcement agency authorized to receive the results of a trap and trace  
17 device under ss. ~~968.28 968.315~~ to ~~968.37 968.405~~, a provider of a wire or electronic  
18 communication service, landlord, custodian, or other person shall install the device  
19 ~~forthwith~~ immediately on the appropriate line and shall furnish the investigative or  
20 law enforcement officer all additional information, facilities, and technical  
21 assistance including installation and operation of the device unobtrusively and with  
22 a minimum of interference with the services that the person so ordered by the court  
23 accords the party with respect to whom the installation and use is to take place, if  
24 the installation and assistance is directed by a court order under s. ~~968.36 968.395~~  
25 (5) (b). Unless otherwise ordered by the court, the results of the trap and trace device

1 shall be furnished to the officer of a law enforcement agency, designated by the court,  
2 at reasonable intervals during regular business hours for the duration of the order.

3 (3) A provider of a wire or electronic communication service, landlord,  
4 custodian, or other person who furnishes facilities or technical assistance under this  
5 section shall be reasonably compensated for the reasonable expenses incurred in  
6 providing the facilities and assistance.

7 (4) No cause of action may lie in any court against any provider of a wire or  
8 electronic communication service, its officers, employees, or agents or other specified  
9 persons for providing information, facilities, or assistance in accordance with the  
10 terms of a court order under s. ~~968.36~~ 968.395.

11 (5) A good faith reliance on a court order, a legislative authorization, or a  
12 statutory authorization is a complete defense against any civil or criminal action  
13 brought under ss. ~~968.28~~ 968.315 to ~~968.37~~ 968.405.

14 **SECTION 509.** 968.375 of the statutes is renumbered 9xx.xx.

\*\*\*\*NOTE: See the NOTE following SECTION 505.

15 **SECTION 510.** 968.38 of the statutes is renumbered 968.725, and 968.725 (2)  
16 (intro.), (2m) (intro.), (3) (d), (4) (intro.) and (5) (intro.), as renumbered, are amended  
17 to read:

18 968.725 (2) (intro.) In a criminal action under s. 940.225, 948.02, 948.025,  
19 948.05, 948.06, 948.085, or 948.095, if all of the following apply, the district attorney  
20 shall apply to the circuit court for his or her county to order the defendant to submit  
21 to an HIV test and to a test or a series of tests to detect the presence of a sexually  
22 transmitted disease, each of which tests shall be administered by a health care  
23 professional, and to disclose the results of the test or tests as specified in sub. (4) (a)  
24 to (c):

1           **(2m)** (intro.) In a criminal action under s. 946.43 (2m), the district attorney  
2 shall apply to the ~~circuit~~ court for his or her county for an order requiring the  
3 defendant to submit to a test or a series of tests administered by a health care  
4 professional to detect the presence of communicable diseases and to disclose the  
5 results of the test or tests as specified in sub. (5) (a) to (c), if all of the following apply:

6           **(3)** (d) If the court has determined that the defendant is not competent to  
7 proceed under s. ~~971.14~~ (4) 975.34 and suspended the criminal proceedings, at any  
8 time after the determination that the defendant is not competent to proceed.

9           **(4)** (intro.) The court shall set a time for a hearing on the matter under sub. (2)  
10 during the preliminary examination, if sub. (3) (a) applies; after the defendant is  
11 bound over for trial and before a verdict is rendered, if sub. (3) (b) applies; after  
12 conviction or a finding of not guilty by reason of mental disease or defect, if sub. (3)  
13 (c) applies; or, subject to s. ~~971.13~~ 975.30 (4), after the determination that the  
14 defendant is not competent, if sub. (3) (d) applies. The court shall give the district  
15 attorney and the defendant notice of the hearing at least 72 hours prior to the  
16 hearing. The defendant may have counsel at the hearing, and counsel may examine  
17 and cross-examine witnesses. If the court finds probable cause to believe that the  
18 victim or alleged victim has had contact with body fluid of the defendant that  
19 constitutes a significant exposure, the court shall order the defendant to submit to  
20 an HIV test and to a test or a series of tests to detect the presence of a sexually  
21 transmitted disease. The test shall be performed by a health care professional. The  
22 court shall require the health care professional who performs the test to disclose the  
23 test results to the defendant, to refrain from making the test results part of the  
24 defendant's permanent medical record, and to disclose the results of the test to any  
25 of the following: